

ESTTA Tracking number: **ESTTA496531**

Filing date: **09/25/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91202219
Party	Plaintiff Eat Right Foods Ltd.
Correspondence Address	SIMONE M KATZ ONEILL SHARTISIS FRIESE LLP ONE MARITIME PLAZA, 18TH FLOOR SAN FRANCISCO, CA 94111 UNITED STATES skatz@sflaw.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Joseph V. Mauch
Filer's e-mail	jmartin@sflaw.com, jmauch@sflaw.com, calendar@sflaw.com
Signature	/Joseph V. Mauch/
Date	09/25/2012
Attachments	Notice of Reliance No.37.pdf (4 pages)(1989470 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EAT RIGHT FOODS LTD.,

Opposer,

v.

KEVIN LEVILLE,

Applicant.

Opp. No.: 91202219

Ser. No.: 77/868,068

Date of Publication:
April 26, 2011

OPPOSER EAT RIGHT FOODS LTD.'S
NOTICE OF RELIANCE NO. 37

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to 37 C.F.R. § 2.122(e) and 704.03(b)(1)(B) of the Trademark Trial and Appeal Board Manual of Practice and Procedure, Opposer Eat Right Foods Ltd. provides Notice of Reliance on Third-Party Registration No. 4,111,464, prepared and issued by the United States Patent and Trademark Office, submitted herewith.

Dated: September 25, 2012.

Respectfully Submitted,
SHARTSIS FRIESE LLP

By: _____


JOSEPH V. MAUCH

Attorneys for Opposer
EAT RIGHT FOODS LTD.

United States of America

United States Patent and Trademark Office

Live Superfoods

Reg. No. 4,111,464

Registered Mar. 13, 2012

Int. Cls.: 5, 29, 30 and 35

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

BEND HOLDINGS INC (OREGON CORPORATION)

#101

63075 CRUSHER AVE.

BEND, OR 97701

FOR: BEE POLLEN FOR USE AS A DIETARY FOOD SUPPLEMENT; DIETARY FOOD SUPPLEMENTS; ENZYME FOOD SUPPLEMENTS; FOOD FOR MEDICALLY RESTRICTED DIETS; FOOD SUPPLEMENTS; FOOD SUPPLEMENTS, NAMELY, ANTI-OXIDANTS; FOODS AND SNACKS WHICH ARE FREE OF GLUTEN TO ACCOMMODATE SPECIAL MEDICAL AND HEALTH CONDITIONS; HEALTH FOOD SUPPLEMENTS; MINERAL FOOD SUPPLEMENTS; NUTRITIONAL FOOD BARS FOR USE AS A MEAL REPLACEMENT; VITAMIN AND MINERAL PREPARATIONS FOR USE AS INGREDIENTS IN THE FOOD AND PHARMACEUTICAL INDUSTRY, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 10-12-2004; IN COMMERCE 10-12-2004.

FOR: COCOA BUTTER FOR FOOD PURPOSES; COCONUT OIL AND FAT; FOOD ADDITIVES, NAMELY, NATURAL FOOD EXTRACTS DERIVED FROM FISH, FISH OIL, FISH PROTEIN, ALGAE, SEAWEED, FISH OR SHARK CARTILAGE, OR SEASHELLS NOT FOR MEDICINAL PURPOSES AND FOR HUMAN CONSUMPTION; FOOD PACKAGE COMBINATIONS CONSISTING PRIMARILY OF CHEESE, MEAT AND/OR PROCESSED FRUIT; FROZEN, FROSTED, PRESERVED, PROCESSED, DRIED, COOKED OR CRYSTALLIZED FRUIT AND VEGETABLES EXTRACTS FOR USE IN PREPARED MEALS OR FOOD; FRUIT AND VEGETABLE GRANULES FOR USE IN PREPARED MEALS OR FOOD; FRUIT CONCENTRATES AND PUREES USED AS INGREDIENTS OF FOOD; FRUIT-BASED FOOD BEVERAGE; FRUIT-BASED RAW FOOD BARS; FRUIT-BASED SNACK FOOD; NON-MEDICATED INGREDIENTS OR ADDITIVES FOR USE IN FOOD, NAMELY, EXTRACTS OF FRUIT OR VEGETABLES AND ESSENCES OF FRUIT OR VEGETABLES; NUTRITIONAL OILS FOR FOOD PURPOSES; NUT-BASED SNACK FOODS, NAMELY, NUT CRISPS; NUT-BASED SNACK FOODS; OILS AND FATS FOR FOOD; OLIVE OIL; PROCESSED BEE POLLEN FOR FOOD PURPOSES; PROCESSED CACTUS FOR FOOD PURPOSES; PROTEIN BASED, NUTRIENT-DENSE SNACK FOODS; PROTEIN FOR USE AS A FOOD ADDITIVE; PROTEIN POWDERS FOR HUMAN CONSUMPTION FOR USE AS A FOOD ADDITIVE; VEGETABLE-BASED RAW FOOD BARS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 10-12-2004; IN COMMERCE 10-12-2004.



David J. Kappas

Director of the United States Patent and Trademark Office

Reg. No. 4,111,464 FOR: BARLEY FLOUR; CHOCOLATE FOOD BEVERAGES NOT BEING DAIRY-BASED OR VEGETABLE BASED; CHOCOLATE-BASED READY-TO-EAT FOOD BARS; COCOA-BASED CONDIMENTS AND SEASONINGS FOR FOOD AND DRINK; HERBAL FOOD BEVERAGES; HONEY; PROPOLIS FOR FOOD PURPOSES; ROYAL JELLY FOR FOOD PURPOSES; SALT FOR PRESERVING FOOD; SNACK FOODS, NAMELY, CHOCOLATE-BASED SNACK FOODS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 10-12-2004; IN COMMERCE 10-12-2004.

FOR: ON-LINE RETAIL STORE SERVICES FEATURING HEALTH FOODS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 10-12-2004; IN COMMERCE 10-12-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SUPERFOODS", APART FROM THE MARK AS SHOWN.

SER. NO. 85-365,065, FILED 7-7-2011.

TEJBIR SINGH, EXAMINING ATTORNEY

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

Requirements in the First Ten Years*

What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or
reminder of these filing requirements.**

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.